

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

██████████,

Appellant.

_____ /

Docket No. 15-000050 HHS

Case No. ██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, and upon the Appellant's request for a hearing.

After due notice, a telephone hearing was held on ██████████. Appellant appeared and testified on his own behalf. ██████████, Appellant's wife, also testified as a witness for Appellant. ██████████, Appeals Review Officer, represented the Department of Community Health (DCH or Department). ██████████, Adult Services Worker (ASW), and ██████████, Adult Services Supervisor, from the ██████████ County Department of Human Services (DHS), testified as witnesses for the Department.

ISSUE

Did the Department properly terminate Appellant's Home Help Services (HHS)?¹

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Appellant is a ██████ year-old Medicaid beneficiary who has been diagnosed with depression, mood swings, hallucinations, hypertension, Hepatitis C, and back pain. (Exhibit A, pages 8, 10).
2. Appellant had been receiving HHS through the Department in an amount of 19 hours and 16 minutes per month, with a total monthly care cost of \$██████. (Exhibit A, page 12).
3. Specifically, HHS were authorized for assistance with housework, laundry, shopping, and meal preparation. (Exhibit A, page 18).
4. On ██████████, ASW ██████████ conducted a reassessment in

¹ Appellant's request for hearing also referenced a suspension based on past due provider logs, but, during the hearing, both Appellant and ASW ██████████ stated on the record that the issue of past due provider logs was resolved.

Appellant's home. (Exhibit A, page 14).

5. During that assessment, Appellant reported that there were no changes in his medical conditions or needs, and that he lived with his stepdaughter. (Exhibit A, page 14).
6. However, upon returning to the local DHS office, ASW ██████████ checked the Bridges system used by DHS and discovered that Appellant's wife was receiving benefits at the same address where Appellant lived. (Testimony of ██████████).
7. ██████████ then telephoned Appellant to ask about his wife's living situation and, on ██████████, Appellant called her back. (Exhibit A, page 14).
8. During that conversation, Appellant reported that he does not live with his wife; she is an addict; and he does not know where she lives. (Exhibit A, page 14; Testimony of Appellant).
9. ASW ██████████ then advised Appellant that he would need to provide documentation demonstrating that his wife does not live with him and that the case was being investigated. (Exhibit A, page 14).
10. After that conversation, ASW ██████████ did not hear back from Appellant. (Testimony of ██████████).
11. On ██████████, ASW ██████████ sent Appellant written notice that his HHS would be terminated on ██████████ because he is no longer eligible for such services as DHS' records indicated that his spouse lives in his home and is a responsible relative. (Exhibit A, page 9).
12. On ██████████, the Michigan Administrative Hearing System (MAHS) received the Request for Hearing filed in this matter. (Exhibit A, page 5).
13. In that request, Appellant wrote that his wife lives in a separate unit of his building and that she is disabled. (Exhibit A, page 5).

CONCLUSIONS OF LAW

The Medical Assistance Program is established pursuant to Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). It is administered in accordance with state statute, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

Home Help Services (HHS) are provided to enable functionally limited individuals to live independently and receive care in the least restrictive, preferred settings. These

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activities must be certified by a physician and may be provided by individuals or by private or public agencies.

Adult Services Manual 101 (12-1-2013) (hereinafter "ASM 101") and Adult Services Manual 120 (12-1-2013) (hereinafter "ASM 120") address the issues of what services are included in HHS and how such services are assessed.

For example, ASM 101 states in part:

Home Help Services are non-specialized personal care service activities provided under the independent living services program to persons who meet eligibility requirements.

Home Help Services are provided to enable individuals with functional limitation(s), resulting from a medical or physical disability or cognitive impairment to live independently and receive care in the least restrictive, preferred settings.

Home Help Services are defined as those tasks which the department is paying for through Title XIX (Medicaid) funds. These services are furnished to individuals who are **not** currently residing in a hospital, nursing facility, licensed foster care home/home for the aged, Intermediate Care Facility (ICF) for persons with developmental disabilities or institution for mental illness.

These activities **must** be certified by a Medicaid enrolled medical professional and may be provided by individuals or by private or public agencies. **The medical professional does not prescribe or authorize personal care services.** Needed services are determined by the comprehensive assessment conducted by the adult services specialist.

Personal care services which are eligible for Title XIX funding are limited to:

Activities of Daily Living (ADL)

- Eating.
- Toileting.
- Bathing.
- Grooming.
- Dressing.
- Transferring.
- Mobility.

Instrumental Activities of Daily Living (IADL)

- Taking medication.
- Meal preparation/cleanup.
- Shopping for food and other necessities of daily living.
- Laundry.
- Light housecleaning.

An individual must be assessed with at least one activity of daily living (ADL) in order to be eligible to receive home help services.

Note: If the assessment determines a need for an ADL at a level 3 or greater but these services are not paid for by the department, the individual would be eligible to receive IADL services if assessed at a level 3 or greater.

ASM 101, pages 1-3

Additionally, ASM 120 provides in part:

Functional Assessment

The **Functional Assessment** module of the **ASCAP** comprehensive assessment is the basis for service planning and for the home help services payment.

Conduct a functional assessment to determine the client's ability to perform the following activities:

Activities of Daily Living (ADL)

- Eating.
- Toileting.
- Bathing.
- Grooming.
- Dressing.
- Transferring.
- Mobility.

Instrumental Activities of Daily Living (IADL)

- Taking medication.
- Meal preparation/cleanup.
- Shopping for food.
- Laundry.
- Light Housework.

Functional Scale

ADLs and IADLs are assessed according to the following five point scale:

1. Independent

Performs the activity safely with no human assistance.

2. Verbal Assistance

Performs the activity with verbal assistance such as reminding, guiding or encouraging.

3. Some Human Assistance

Performs the activity with some direct physical assistance and/or assistive technology.

4. Much Human Assistance

Performs the activity with a great deal of human assistance and/or assistive technology.

5. Dependent

Does not perform the activity even with human assistance and/or assistive technology.

Home Help payments may only be authorized for needs assessed at the 3 level or greater.

An individual must be assessed with at least one activity of daily living in order to be eligible to receive home help services.

ASM 120, pages 2-4

In this case, Appellant's HHS were terminated on the basis that Appellant's wife is a responsible relative who is able and available to care for him. With respect to responsible relatives, ASM 101 states:

Services not Covered by Home Help

Home help services must **not** be approved for the following:

* * *

- Services for which a responsible relative is **able** and **available** to provide (such as house cleaning, laundry or shopping). A responsible relative is defined as an individual's spouse or a parent of an unmarried child under age 18.

ASM 101, page 5

Similarly, with respect to responsible relatives, ASM 120, page 6, provides:

Responsible Relatives

A responsible relative is defined as an individual's spouse or a parent of an unmarried child under age 18.

Activities of daily living may be approved when the responsible relative is **unavailable** or **unable** to provide these services.

Note: Unavailable means absence from the home for an extended period due to employment, school or other legitimate reasons. The responsible relative must provide a work or school schedule to verify they are unavailable to provide care. **Unable** means the responsible person has disabilities of their own which prevent them from providing care. These disabilities must be documented and verified by a medical professional on the DHS-54A, Medical Needs form.

Do **not** approve shopping, laundry, or light housecleaning, when a responsible relative of the client resides in the home, **unless** they are unavailable or unable to provide these services. Document findings in the general narrative in ASCAP.

Example: Mrs. Smith is in need of home help services. Her spouse is employed and is out of the home Monday thru Friday from 7a.m. to 7p.m. The specialist would not approve

hours for shopping, laundry or house cleaning as Mr. Smith is responsible for these tasks.

Example: Mrs. Jones is in need of home help services. Her spouse's employment takes him out of town Monday thru Saturday. The specialist may approve hours for shopping, laundry or house cleaning.

As testified to by the Department's witness, Appellant is married and his wife clearly meets the definition of a responsible relative. Moreover, it appears that Appellant's wife is available and able to provide care. While Appellant claimed he did not live with her, the Bridges system used by DHS demonstrated that Appellant's wife was receiving benefits at the same address where Appellant lived and, despite being given ample opportunity to do so before his services were terminated, Appellant failed to provide any documentation contradicting the information in Bridges.

In response, Appellant testified that his wife did not live with him at the time of the home visit or termination, and that he did not know where she was living during that time period. He also testified that she did move into the same building as him in ██████████, but that she is disabled and does not assist him.

Similarly, Appellant's wife also testified that she now lives in the same building as Appellant, but that she only moved in a couple months ago and does not assist him. Appellant's wife further testified that, even if she was not living with Appellant, she has always used Appellant's address in dealing with DHS because she did not always have another address to use consistently.

Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in terminating his HHS. Moreover the undersigned Administrative Law Judge is limited to reviewing the Department's decision in light of the information it had at the time it made that decision.

Here, given the above evidence and the information available to the Department at the time it made its decision, Appellant has failed to meet his burden of proof and the termination of HHS must be affirmed. For example, while Appellant testified that his wife was not living with him, it is undisputed that she was using the same address as Appellant and, given that evidence and the lack of any support for Appellant's claims, Appellant cannot show that the Department erred in finding that Appellant was available to provide care. Moreover, while Appellant also claims that his wife is unable to care for him due to her own disability, he never raised that argument prior to filing the request for hearing and his wife's disabilities have not been documented and verified by a medical professional on a DHS-54A Medical Needs form, as required by the above policy.

[REDACTED]
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DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly terminated Appellant's HHS.

IT IS THEREFORE ORDERED THAT:

The Department's decision is **AFFIRMED**.

Steven Kibit

Steven Kibit
Administrative Law Judge
For Nick Lyon, Director
Michigan Department of Community Health

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

SK [REDACTED]

cc: [REDACTED]

***** NOTICE *****

The Michigan Administrative Hearing System may order a rehearing on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. The Michigan Administrative Hearing System will not order a rehearing on the Department's motion where the final decision or rehearing cannot be implemented within 90 days of the filing of the original request. The Appellant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt of the rehearing decision.